MR. ANTHONY C. LEO

v.

NANDLAL BAL KRISHAN AND ORS.

OCTOBER 24, 1996

[G.N. RAY AND B.L. HANSARIA, JJ.]

Code Of Civil Procedure, 1908—Order 40, Rules 1 & 3—Property in custodia legis—Rights and obligations of third party, the tenant-Summary adjudication of—On the report of receiver—Whether justified—Held, any incidence of tenancy which is regulated and controlled by special statute, cannot be altered varied or interfered with except in accordance with the provisions of such statute—But the tenant cannot claim protection of any assumed right, not flowing from the incidence of tenancy, in such situation, it is within right of the court to pass suitable order or direction against the tenant on providing him reasonable opportunity to defend, to which he would have been entitled in a regular court of law—Thus the question of summary adjudication to depend on the nature of dispute and the defence claimed by third party—In the present case in view of the facts, report of the receiver could not have been decided in summary proceeding.

Order 40, Rule 1(2) & (3)—Receiver-Duty of—Right and obligations of third party in respect of property in Custodia legis—Interference with—Whether permitted-Held, since the property is managed by the court through receiver, the receiver is under obligation to take all reasonable steps for preservation and maintenance of such property—The receiver cannot interfere with any right of the third party, as the property does not rest free from incumbrances.

In a suit with regard to dispute over a property, receiver was appointed by the High Court. The appellant was assigned tenancy of the above property. During pendency of the suit, the landlords demanded additional compensation for the structure of lifts and 2 box like stands in the tenanted property from the appellant which was paid by him. This understanding was communicated to the receiver. After 16 years of the agreement, the receiver submitted a report to the High Court, in the pending suit complaining against the appellant of having constructed the above structures and prayed for directions of removal of the same. In a further report, the receiver alleged that the appellant was serving liquor

A in permit room which was illegal and contrary to terms of lease granted by Municipal Corporation to the Landlords and prayed for stopping the activity. The appellant contended that when tenancy was assigned to him, the structures were already in existence. Several affidavits were filed in support of the fact; and that the landlords as well as the receiver were
B aware of the structure as additional compensation was paid by the appellant to the landlords with regard to the structures and the receiver was communicated of the same. He further contended that he was operating the permit room after obtaining licence from the statutory authority.

The High Court on the basis of the reports directed the receiver to
C demolish the construction and directed the concerned authorities not to renew the permit of the appellant. The Division Bench of High Court dismissed the appeal against the above order.

In appeal to this court, the appellant contended that since he was not party to the suit, his rights and protection as a tenant could not have
D been adjudicated in a summary manner on the basis of reports filed by a receiver; and that the appointment of the receiver does not amount to vesting of the properties in respect of which receiver was appointed by annulling all encumbrances and rights of third parties and tenants in the suit properties and that the right of a tenant over a suit property, well
E protected by the statute governing the relationship between a landlord and tenant.

Allowing the appeal, this court

HELD : 1.1 In view of the fact that the appellant tenant has came
F out with a specific case, the contentions raised by the appellant should not be decided in a summary proceeding to dispose of reports of the receiver of a complaint by a party to the suit about alleged illegal activities by a tenant in a property in suit. Any summary disposal of such dispute on the claim of some legal right by the tenant is likely to seriously affect the tenant because once some constructions in the tenanted premises are removed on
G a finding that such constructions were made illegally and unauthorisedly by the tenant, the tenant not only suffers the said direction of removal at present but becomes liable to be evicted from the suit premises for such unauthorised construction by him. The findings against the tenant on the question of running a permit room cannot but seriously affect the tenant's
H right to operate a permit room and is also likely to expose him to the risk

of being evicted from the suit premises. Therefore the impugned order cannot be held to be justified. [687-A-D] A

1.2 The question of summary adjudication by the court appointing the receiver or relegating the receiver to a regular suit for adjudication of the dispute concerning third party will depend on the nature of dispute and the defence claimed by the third party. If for the purpose of deciding the dispute of unauthorised and illegal activity affecting maintenance and preservation of the property in *custodia legis* it becomes necessary to determine any right claimed under a statute or flowing from some action inter parte as may be pleaded and required to be decided, it is only desirable that the court would restrain from such determination in the summary proceeding initiated before it on the complaint of the receiver or a party to the suit and court will direct the receiver or a party for the suit seek adjudication of the dispute before a competent court by bringing appropriate legal action. Save as aforesaid, it will not be correct to contend that in no case the court exercising control and supervision of the property in suit by appointing a receiver will be incompetent even to pass direction against a third party for purpose of presentation of the property, once such third party pleads defence in justification of his action. [686-B-E] B C D

1.3. The court becomes *custodia legis* of the properties in suit in respect of which receiver is appointed. Such dejure possession of the Court through its receiver, does not bring about vesting of the properties in receiver or in court free from incumbrances even *pendente lite*. Despite appointment of a receiver, rights and obligations of third parties in respect of properties in *custodia legis* remain unaffected. Where a receiver appointed by the court is in actual physical possession of a property, no one, whoever he may be can disturb the possession of the receiver and the court may hold such person who disturbs receiver's possession as guilty for committing contempt of court. A man, who has a right paramount to that of receiver, must before he takes any step of his own motion, must apply to the court for leave to assert his right. Grant of leave in such case is the rule and refusal to grant leave is exception. The rule that receiver's possession will not be disturbed without leave of the court is, not applicable if the receiver is not in actual physical possession of the property. [683-G-H, 684-A-B] E F G

Everest Coal Company Pvt. Ltd. v. *State of Bihar & Ors.*, AIR (1977) SC 2304, referred to. H

A **1.4. Since the properties in a suit are being managed maintained and administered by the Court through receiver the receiver is under an obligation to take all reasonable steps for preservation and maintenance of such properties. If for such preservation action in civil or criminal court is necessary, the receiver is to draw the attention of the Court, of relevant facts necessitating such legal action and take leave of the court to institute** B **appropriate legal proceedings for the preservation of the property. As the property does not rest free from incumbrances in *custodia legis* by annulling all rights and obligations attached to the property, the receiver cannot interfere with any right of the third party. Sub rule (2) of Rule 1 of Order 40 of the Civil Procedure Code clearly indicates that the court and its** C **officer, the receiver, does not possess any right higher than the right a party to the suit possesses. [684-C-F]**

1.5. No order for eviction of the tenant can be passed by the Court at the instance of its officer, the receiver, without taking recourse to D **appropriate proceedings for eviction of the tenant under the appropriate statute regulating and governing the *inter-se* rights of landlords and tenant. Where a rent act is applicable, the interse rights and obligations of the Landlord and tenant are regulated and controlled by such Rent Act. In areas where any special law governing the incidences of tenancy is not applicable, the law relating to lessor and lessee as envisaged by the general** E **law of land, namely, Transfer of Property Act, will regulate and determine interse rights of landlord and tenant. In dealing with the rights and obligations which a third party may have in respect of a property in which a receiver has been appointed the receiver, like a party to the suit, will have same limitations. The receiver will be bound by the incidences of tenancy** F **flowing from the statute regulating and determining *inter-se* rights of landlord and tenant. Even apart from an eviction proceeding, any incidence of tenancy which is regulated and controlled by a special statute cannot be altered, aired or interfered with except in accordance with the provisions of such statute. The court in such cases has no jurisdiction to pass orders and direction affecting the right of the tenant protected,** G **controlled or regulated by the Rent Act on the score of expediency in passing some order or direction for the maintenance or preservation of the property in *custodia legis.* [685-A, 684-F-G, 685-B-C]**

1.6. Though a tenant of a property in *custodia legis* cannot be H **deprived of statutory protection of the rights of tenant vis-a-vis landlord**

he cannot claim protection of any assumed right not flowing from the incidences of tenancy. If a tenant resorts to unauthorised and illegal activity in respect of tenanted premises when such premises is in *custodia legis,* for prevention of such illegal and unauthorised activities not consistent with any right flowing from the incidence of his tenancy, it may not be necessary to institute a suit for preventing the tenant from such illegal activities, but the court, being apprised by the receiver of such illegal activities of a tenant, thereby obstructing the court's overall supervision and concern for preserving or maintaining the property in *custodia legis,* will be within its right to pass suitable order or direction against the tenant for prevention of illegal and unauthorised activities after giving the tenant reasonable opportunity to place his defences against allegation of unlawful and illegal activity must depend on the facts of each case. The Court, in such a case, should ensure broadly that the tenant is not deprived of the reasonable opportunity to which he would have been entitled if an action against him in a court of law had been brought on such complaint.

[685-D, F-H, 686-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13237 of 1996.

From the Judgment and Order dated 23.2.96 of the Bombay High Court in Appeal (Lodged) No. 3/96 in Suit No. 1010 of 1973.

Ms. Indu Malhotra for the Appellants.

Mrs. Manik Karanjawala for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J. Leave granted.

Heard learned counsel for the parties. The order dated February 23, 1996 passed by the Division Bench of the Bombay High Court in Appeal (Lodged) No. 3 of 1996 in Suit No. 1010 of 1973 in the Ordinary Original Civil Jurisdiction arising out of the Order dated December 6, 1995 passed by the learned Single Judge on the reports of the receiver appointed by the Court in the said Suit No. 1010 of 1973 in so far as the same affects the appellant. Mr. Anthony C. Leo, is the subject matter of challenge in this appeal.

A Nandlal Balkrishnan Khanna and other partners of Khanna Construction House obtained a lease of Plot No. 44 of Scheme No. 58, Worli Estate, Bombay from the Municipal Corporation of Greater Bombay. The said partners constructed a building on the said plot known as Khanna Construction House. The appellant claims tenancy in respect of a room in the said premises under the said partners where he is running a business named and styled as Flora Chinese Restaurant. In view of disputes arising between the partners of M/s Khanna Construction House, one of the partners filed a suit in the ordinary original civil jurisdiction of the Bombay High Court being Suit No. 1010 of 1973 against other partners for dissolution of the firm and distribution of assets including the building Khanna Construction House. The appellant is not a party in said suit. Some time in 1973, the Bombay High Court appointed a Receiver in the said suit in respect of the assets of the partnership firm including the said building Khanna Construction House.

The appellant's case is that the landlords of the building granted tenancy to Abdul Rehman Noor Mohammad and others in respect of ground floor premises where the said tenants started a restaurant in the name of Flora Restaurant. Some time in 1965, the said business together with the goodwill and benefit of tenancy rights was taken over by J.S. Khanna and S.G. Khanna. In April, 1967, the said Sri J.S. Khanna and S.G. Khanna assigned the said business as a going concern together with goodwill and benefit of tenancy rights to Father S. Perreira. On April 10, 1970, Father Perreira transferred the said restaurant business to the appellant together with the goodwill and benefits of tenancy. After taking over the said business, the appellant changed the name of the business to Flora Chinese Restaurant. It is the specified case of the appellant that when he got assignment of tenancy and business of the restaurant, the tenanted premises had already in it lofts and two stand like boxes attached on the outer wall for storing gas cylinders and air conditioning units.

The appellant has contended that in 1979, the landlords made a demand for additional compensation for the box type stands affixed on the outer wall of the premises for storing gas cylinders and air conditioning units. The landlord also raised some dispute regarding the chimney duct in the restaurant premises. According to the appellant, a meeting was held between the appellant and the landlords at the instance of court receiver, and the landlords demanded extra compensation at the rate of Rs. 2 per

square foot of the area where the said two stands for housing gas cylinders and air conditioning units were installed. On measurement, the said area was found to be 60 sq. ft. and the appellant had agreed to pay additional amount of Rs. 120 per month. The landlords also insisted that the appellant would bear additional insurance premium and the appellant had agreed to such demand. The appellant has contended that under the Fire Brigade Rules, the gas cylinders cannot be stored inside the premises but such gas cylinders are required to be stored outside the premises. The appellant further contends that by letter dated June 25, 1979, the learned Advocate of the respondent had informed the court receiver about such agreement between the landlords and the appellant. The appellant has also contended that in a meeting between the said receiver and the parties to the suit, it was decided that the receiver would file a suit for eviction of the appellant in the Court of Small Causes and one Mr. N.K. Desai was also engaged to file such suit for eviction on behalf of the receiver. But till today, no such eviction suit has been filed against the appellant.

In March, 1995, after a lapse of about 16 years, the landlords thought of a short cut measure to evict the appellant from the said premises without filing an ejectment suit in the Court of Small Causes and in furtherance of such measure, induced the court receiver to submit a report to High Court in the pending suit making complaint against the appellant of construction of said lots and the said two stand type boxes on the outer wall for storage of gas cylinders and air conditioning units and the receiver prayed for a direction from the High Court against the appellant for removal of the said lofts and the said box type stands.

On August 22, 1995, the said receiver submitted a further report in the said suit alleging therein that appellant had a permit room in the said restaurant where liquor was being served and such activity was illegal and contrary to the terms of lease granted by Greater Bombay Municipal Corporation in favour of the landlords prohibiting running a bar in the premises built on the leasehold land. The receiver also sought for a direction from the High Court on the appellant for stopping the said illegal activity of using the premises as a permit room and serving liquor in a room in the said restaurant. The appellant contends that the appellant was carrying on the activity of having a permit room and serving liquor to customers since several years after the lifting of the prohibition policy in the State of Maharashtra. The appellant has also contended that he has

A obtained licence for such permit room and service of liquor in the restaurant. The appellant has further contended that Greater Bombay Municipal Corporation is agreeable to allow service of liquor and running a permit room in the leasehold property on payment of specified sum to the Corporation and the appellant agrees to pay such amount to the Corporation.

B

In support of the contention of the appellant that long before the receiver was appointed in the said suit *inter-se* the partners of the said firm, the said two box type stands and lofts were in existence in the premises where the appellant had been carrying on his business of restaurant, C supporting affidavits were filed before the High Court by one Abdul Razak Dawood stating that Flora Restaurant was started in 1962 by Noor Mohammed and others (though the year of starting the said business of restaurant was wrongly mentioned as 1962 instead of 1964). It was stated by the said Razak that he was associated with the restaurant business ever since its inception and when J.S. Khanna and S.G. Khanna took over the D said business from Noor Mohammad, the said lofts and stands for storing gas cylinders and air conditioning units were in existence. Mrs. Mande D pente and her husband who were employed in the said restaurant in 1967, also filed an affidavit stating that the said lofts and two stands were in existence in 1967. Another affidavit affirmed by one Charlie D'Souza was E also filed. The deponent stated that he had been working in the restaurant since 1969 and ever since his employment, he had seen the said lofts and stands. Similar affidavit was filed by R. Murusen stating that he was employed in the kitchen of the restaurant in 1967 and he had seen the said boxes and lofts ever since his employment in 1967.

F

The appellant also contended before the learned Single Judge, before whom the reports of the receiver against him were filed, that the receiver appointed in the suit for dissolution of partnership and for distribution of assets including the said building Khanna Construction House was limited to adjudication of rights and obligations *inter-se* the parties and G appellant not being party to the same, his rights qua tenant was not required to be adjudicated in the said suit and, in any event, his right as a tenant was protected under the Bombay Rents Act. Although the appellant had not resorted to any act for which his tenancy could be terminated and he could be evicted from the said premises under his occupation as a H tenant, even if it is assumed that the appellant was liable to be evicted from

the said premises, such eviction could only be affected by institution of appropriate suit for eviction of the appellant in the Small Causes Court under the Bombay Rents Act on permissible grounds under the said Act. It was quite open to the High Court to grant permission to the receiver for institution of suit for eviction of the appellant after being *prima facie* satisfied on materials submitted before the Court that a case for instituting suit for eviction was justified.

The appellant also contended that the receiver is not entitled to bypass the statutory requirement of evicting a tenant only in due process of law by initiating eviction proceeding under the Bombay Rents Act in the appropriate court simply by alleging, at the instance of landlords, that the tenant had made unauthorised constructions and had indulged in unauthorised activity of using a portion of the tenanted premises as a permit room and place for service of liquor to the customers. The appellant also contended that if the court would decide the question of eviction of the appellant only on the basis of the reports of the receiver, the valuable rights of a tenant protected under the Bombay Rents Act would be defeated and the tenant would be deprived to have a full fledged trial where he would be entitled to lead evidence in support of his case and cross examine the witnesses of the landlord.

Such contentions were, however, not accepted by the learned Judge and on the findings, *inter alia*, that the appellant had made unauthorised construction of the said lofts and box type stands on the outer wall and had also been using a portion of the tenanted premises as a permit room and has been serving liquors to the customers in such portion, when under the terms of lease granted by Greater Bombay Municipal Corporation to the landlords use of the leasehold property in vending liquors was prohibited, and by such action of appellant, the lease in favour of the landlords was liable to be cancelled, the learned Single Bench of the Bombay High Court directed that the concerned authorities would not renew the permit of the appellant for serving liquor and the receiver would demolish unauthorised constructions with the aid of the police, if necessary.

The appellant being aggrieved by such directions of the learned Single Bench, preferred Appeal (Lodged) No. 3 before the Division Bench of the High Court and the Division Bench by the impugned judgment dismissed the appeal and upheld the directions given by the learned Single

A Bench. The Division Bench, however, stayed demolition of the said constructions for a period of six weeks to enable the appellant to take legal steps against the order.

At the hearing of the appeal, Mr. Salve, the learned Senior Counsel appearing for the appellant, has contended that the receiver was appointed
B in the said suit for preservation of the properties in dispute for protecting the interests of the parties to the suit. By such appointment, the court became *custodia legis* of the properties in suit through the officer of the court, namely, the receiver. Such appointment of receiver does not amount to vesting of the properties in respect of which receiver was appointed by
C annulling all incumbrances and rights of third parties and tenants in the suit properties. The anxiety of the receiver or, for that matter of the court appointing the receiver to maintain the properties in suit may be well appreciated. But being impelled by such anxiety, neither the receiver nor the court can affect the tenant's rights in the suit property well protected
D by the statute governing the relationship between a landlord and tenant.

Mr. Salve has submitted that even *prima facie* there was no material on the basis of which the High Court could come to the finding that the appellant has altered the tenanted premises either before or after the appointment of receiver and during the continuance of the receivership, in
E such a manner by making permanent constructions in the tenanted premises which had either materially altered the nature and character of the said premises or have endangered the safety and security of the same. Mr. Salve has submitted that admittedly the tenanted premises was being used as a restaurant for a very long time. The appellant became the tenant
F when Father Perreira had transferred the tenancy right together with goodwill of the restaurant business as an ongoing business concern in favour of the appellant in April, 1970 and since then, the appellant has been running the business of restaurant by changing its name from Flora Restaurant to Flora Chinese Restaurant.

G Mr. Salve has submitted that the alleged unauthorised construction, namely, the said lofts and box type stands on the outer wall for storing gas cylinders and air conditioning units, were in existence long before the appellant got the assignment of tenancy right in 1970. The appellant in support of such contention about the existence of such lofts and box type
H stands, have filed supporting affidavits by a number of persons as already

indicated.

Mr. Salve has submitted that for running a business of restaurant, storage of gas cylinders was an indispensable necessity and it does not require any imagination that the predecessor of the appellant who had run the business of the restaurant must had stored gas cylinders in the premises. Under the Fire Brigade Rules, gas cylinders were required to be stored by ensuring proper safety and such storage on outside walls was only just and porper and in conformity of the Fire Brigade Rules. Precisely for the said reason, the predecessors in restaurant business in the said premises had made arrangements of such storage of gas cylinders by constructing box type stands on the outer wall. Such box type constructions were also made for keeping air conditioning units. It is nobody's case that the appellant installed air conditioning unit for the first time in the said restaurant and it is the appellant who has been running the business of restaurant in the premises in question for the first time after obtaining assignment of tenancy rights.

Mr. Salve has submitted that the appellant's case of existence of the said lofts and box type stands on the outer walls from long before his induction as a tenant, gets ample support from the affidavits affirmed by a number of persons who being closely associated with the restaurant business in the tenanted premises long before the induction of the appellant, have categorically stated about the existence of such lofts and box type stands from long before the induction of the appellant as a tenant. Such affidavits could not have been discarded in a summary manner in disposing of the reports of the receiver, more so, when the valuable tenancy right of a third party like the appellant was intrinsically involved in the exercise of giving directions affecting the interest of the tenant and nullifying the statutory protection of a tenant.

Mr. Salve has also submitted that landlords and the receiver were well aware of the existence of such lofts and box type constructions and in June 1979, the landlords made demands for extra payment at the rate of Rs. 2 per sq. ft. for such construction measuring 60 sq. ft. in all and also additional premium on account of storing gas cylinders by the appellant. The appellant's Advocate's letter dated June 25, 1979 sent to the receiver clearly indicates the factum of landlords and receiver's awareness of the existence of the said lofts and the box type stands and the agreement

A arrived between the landlords and the appellant to pay additional sum of Rs. 120 and additional amount on account of premium.

Mr. Salve has submitted that the landlords and the receiver were fully aware of the legal position of the landlords vis-a-vis a tenant protected by the Bombay Rents Act and a decision was taken long back to institute an B eviction suit by the receiver against the appellant in the Court of Small Causes under the said Rents Act, but such eviction suit was not instituted presumably on appreciating that such attempt for eviction would be an exercise in futility. Mr. Salve has also submitted that running a bar in a portion of the restaurant is only ancillary to the main business of an eating C house or restaurant. Such bar was being run after obtaining valid licence from the appropriate statutory authority. The allegation of the threat of cancellation of the lease granted by the Municipal Corporation to the landlords on account of running a bar in the said premises is also unfounded, and a case of such threat is being set up as a ploy to oust the D appellant. Consumption of liquor was prohibited in Maharashtra when the lease was granted by the Corporation to the landlords and, accordingly in the lease deed, a clause containing prohibition of using the leasehold property for service of liquor was incorporated. There has been change in the policy and Maharashtra is not a State where consumption of liquor in public is prohibited. The Municipal Corporation on being approached by E the appellant, has expressed its willingness to allow consumption of liquor in the leasehold property by amending the terms of lease on payment of specified sum.

Mr. Salve has further submitted that a tenant may be liable to be F evicted for unauthorised construction or for other activities mentioned in the Rent Act. But the tenant cannot be evicted from the tenanted premises on the alleged ground of unauthorised construction or other illegal activities which may enable the landlord to obtain order of eviction under the Bombay Rents Act unless a suit for eviction is filed before the Small Causes Court under the said Act and existence of grounds for eviction are clearly G established by leading evidence in such suit. A landlord is also not entitled to demolish alleged unauthorised construction in the tenanted premises unless the dispute about such construction is adjudicated in an appropriate forum. In any event, the dispute as to the existence of unauthorised construction by a tenant is required to be adjudicated only in a suit H instituted against the tenant where such dispute may be resolved on the

basis of evidence to be adduced by the respective party by examining witnesses in support of the respective case. A

Mr. Salve has submitted that the appellant is not a party in the said suit. His rights and protection as a tenant could not have been adjudicated in a summary manner on the basis of reports filed by the receiver. The impugned order is not only illegal but manifestly unjust and improper resulting in serious miscarriage of justice. B

It has been contended by Mr. Salve that the receiver who merely holds dejure possession of the property for the benefit of parties to the suit without the property being vested in the receiver, has no higher rights than the landlords themselves. If there was no receiver, the remedy of the landlords was to file a suit against the tenant in the Court of Small Causes being the appropriate court under the Bombay Rents Act. Such position is not changed by mere appointment of a court receiver in a suit *inter-se* the landlords for distribution of properties in which the tenant is not a party. Mr. Salve has submitted that if such course of action against the tenant is permitted, it would be easy for designing landlords to circumvent the provisions of Rent Act by filing a suit amongst the landlords and after obtaining an order for receiver in such suit even by the consent, and then, with the instrumentality of the receiver to obtain orders from Court in the said suit against the tenant in complete disregard of the statutory protection of the rights of the tenant under the Rents Act regulating *inter-se* rights and obligations of a tenant and landlord. Mr. Salve has also submitted that such procedure would be contrary to Order 40 Rule 1 (2) of Civil Procedure Code which protects the rights of the persons who are not parties to the suit as against the receiver. Mr. Salve has submitted that the impugned directions of the High Court for demolishing the said lofts and box type constructions and also direction prohibiting renewal of licence for running a bar by the appellant and restriction imposed on the appellant to have a permit house and to run a bar in the tenanted premises, should be set aside by allowing this appeal. C D E F G

Mr. R. Nariman, the learned Senior Counsel appearing for the respondents, has, however, disputed the contentions of Mr. Salve. Mr. Nariman has contended that for an order of eviction of a tenant, a suit under the appropriate Rent Act, where such Act is applicable is required to be instituted and such protection of the tenant cannot be defeated H

A without taking recourse under the provisions of the Rent Act. But in the instant case, no order of eviction of the tenant has been passed by the Court in giving the directions on the receiver by the impugned order.

Mr. Nariman has submitted that the receiver has been appointed in respect of properties in dispute including the building, Khanna Construc-
B tion House, because the Court felt it expedient to preserve the properties in dispute by getting such properties supervised and administered by its own officer, the receiver. When the properties are *custodia legis,* the Court is not only competent to issue necessary orders and direction on its officer, the receiver, for proper preservation and maintenance of such properties
C but in a way, the Court is under the obligation to issue appropriate orders and directions for effecting such maintenance and preservation.

Mr. Nariman has contended that a tenant has a statutory protection against eviction except on grounds for such eviction under the Rent Act
D and the relationship between a landlord and a tenant is controlled and regulated by the provisions of the Rent Act. The circumstances under which an order of eviction is to be made, the authority which will pass such order are contained in the Rent Act. Mr. Nariman has submitted that it should be appreciated that although a tenant is free to enjoy peaceful
E possession of the tenanted premises, he has no right to destroy such premises or indulge in such activities which are likely to seriously affect the safety and security of the house. Similarly he is not entitled to indulge in activities which will materially effect the nature and character of the tenanted premises and is likely to bring about a situation by which the
F superior right of the landlord in the premises will be in jeopardy. Such action being *per se* illegal and unauthorised and beyond the usual rights of a lessee vis-a-vis the lessor, the lessor or landlord has not only right to prevent such activities but has also right to take recourse to eviction of the lessee or tenant by bringing an action for eviction in accordance with the provisions of the relevant tenancy act. If a landlord is entitled to take
G suitable action for preventing a tenant in indulging in unlawful activities in respect of tenanted premises, the receiver has certainly such right. The receiver has a paramount duty to draw the attention of the Court appointing the receiver, of such unlawful activities by the tenant and to seek appropriate direction by way of remedial measures to prevent such ac-
H tivities.

Mr. Nariman has submitted that in the instant case, the receiver has not done anything extraordinary. Since the tenant had changed the nature and character of the tenanted premises by making permanent construction and had indulged in storing gas cylinders endangering the safety and security not only of such premises but of the entire building and has indulged in using the premises as a bar, even when the landlords under the terms of the lease are prohibited to indulge in such activities at the risk of lease granted by Municipal Corporation of Greater Bombay being cancelled, the receiver and, for that matter, the Court had a solemn duty to pass appropriate orders and directions for prevention of such unauthorised activities after affording the tenant an opportunity of being heard.

Mr. Nariman has submitted that the tenant was put to notice of the allegation of his illegal activities in the tenanted premises and was also given opportunity to raise his defences against such allegation. After giving the tenant reasonable opportunity to place his case, the Court after being satisfied that the tenant had indulged in illegal activities, not permitted to be undertaken in exercise of his right as a tenant, has passed the directions contained in the impugned order so that the properties in *custodia legis* are properly preserved during the pendency of the said suit. The landlords, despite such orders or directions of the Court, still retain the right to bring action for eviction under the Bombay Rents Act for the said illegal activities. In the aforesaid facts, no interference is called for and the appeal should be dismissed.

Giving our careful consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that a receiver is appointed by the Court when the Court entertains a view that for preservation of the properties in suit, till the rights of parties to the suit are finally adjudicated, such properties should be preserved by exercising control and supervision of the same through the officer of the Court, the receiver. The Court becomes *custodia legis* of the properties in suit in respect of which receiver is appointed. Such *de jure* possession of the Court through its receiver, however, does not bring about vesting of the properties in receiver or in court free from incumbrances even *pendente lite*. Despite appointment of a receiver, rights and obligations of third parties in respect of properties in *custodia legis* remain unaffected. Where a receiver appointed by the Court is in actual physical possession of a property, no one, whoever he may be, can disturb the possession of

A the receiver and the Court may hold such person who disturbs receiver a possession as guilty for committing contempt of court. A man, who thinks he has a right paramount to that of receiver, must before he takes any step of his own motion, apply to the Court for leave to assert his right. Grant of leave in such case is the rule and refusal to grant leave is exception (*Everest Coal Company Pvt. Ltd.* v. *State of Bihar and Ors.,* AIR (1977) SC
B 2304. The rule that receiver's possession will not be disturbed without leave of the Court is, however, not applicable if the receiver is not in actual physical possession of the property.

Since the properties in a suit is being managed, maintained and
C administered by the Court through receiver, the receiver is under an obligation to take all reasonable steps for preservation and maintenance of such properties. If for such preservation, action in civil or criminal court is necessary, receiver is to draw the attention of the Court of relevant facts necessitating such legal action and take leave of the Court to institute
D appropriate legal proceedings for the preservation of the property. As the property does not vest free from incumbrances in *custodia legis* by annulling all rights and obligations attached to the property, the receiver cannot interfere with any right of the third party. Sub rule (2) of Rule 1 of Order 40 of the Code of Civil Procedure provides : "Nothing in this rule shall authorise the court to remove from possession or custody of property any
E person whom any party to the suit has not a present right to remove."

Such sub-rule clearly indicates that the Court and its officer, the receiver, does not possess any right higher than the right a party to the suit possesses.

F

Where a Rent Act is applicable, the *inter-se* rights and obligations of the landlord and tenant are regulated and controlled by such Rent Act. In areas where any special law governing the incidences of tenancy is not applicable, the law referring to lessor and lessee as envisaged by the
G general law of the land, namely, Transfer of Property Act, will regulate and determine *inter se* rights of landlord and tenant. In dealing with the rights and obligations which a third party may have in respect of a property in which a receiver has been appointed, the receiver, like a party to the suit, will have the same limitation. The receiver will be bound by the incidences of tenancy flowing from the statute regulating and determining *inter se*
H rights of landlord and tenant. Therefore, there is no manner of doubt that

no order for eviction of the tenant can be passed by the Court at the instance of its officer, the receiver, without taking recourse to appropriate proceedings for eviction of the tenant under the appropriate statute regulating and governing the *inter-se* rights of landlord and tenant. It may also be emphasised here that even apart from an eviction proceeding any incidence of tenancy which is regulated and controlled by a special statute cannot be altered; varied or interferred with except in accordance with the provisions of such statute. The Court in such cases has no jurisdiction to pass orders and direction affecting the rights of the tenant protected, controlled or regulated by Rent Act on the score of expediency in passing some order or direction for the maintenance and preservation of the property in *custodia legis.*

It is to be indicated that though a tenant of a property in *custodia legis* cannot be deprived of statutory protection of the rights of tenant vis-a-vis landlord, a tenant cannot claim protection of any assumed right not flowing from the incidences of tenancy. For example, if a tenant starts making some unauthorised construction in the tenanted premises threatening safety and security of the tenanted premises or of the building as a whole, the landlord can certainly prevent such activities by the tenant by bringing appropriate action in Court seeking prohibitory and mandatory order against the tenant without seeking his eviction. Such right of the landlord must be held to be in addition to his right to seek eviction under the appropriate tenancy law, if permitted.

In our view, if a tenant resorts to unauthorised and illegal activity in respect of tenanted premises when such premises is in *custodia legis,* for prevention of such illegal and unauthorised activities not consistent with any right flowing from the incidence of his tenancy, it may not be necessary to institute a suit for preventing the tenant from such illegal activities; but the Court, being apprised by the receiver of such illegal activities of a tenant, thereby constructing the Court's overall supervision and concern for preserving or maintaining the property in *custodia legis,* will be within its right to pass suitable order or direction against the tenant for prevention of illegal and unauthorised activities after giving the tenant reasonable opportunity to place his defences against allegation of unlawful and illegal activity. What should be reasonable opportunity, must depend on the facts of each case. The Court, in such a case, should ensure broadly that the tenant is not deprived of the reasonable opportunity to which he would

A have been entitled if an action against him in a court of law had been brought on such complaint.

It appears to us that since the court must be presumed to be fully unbiased in deciding the allegation of unauthorised and illegal activities of a tenant causing prejudice against the lawful owner in the matter of B preservation and maintenance of the property *pendente lite.* the necessity of adjudication of such dispute by another court by bringing a legal action before it, as a matter of course, is neither necessary nor expedient. It however, should be made clear that if for the purpose of deciding the dispute of unauthorised and illegal activity affecting maintenance and C preservation of the property in *custodia legis* it becomes necessary to determine any right claimed under a statute or flowing from some action *inter parte* as may be pleaded and required to be decided, it is only desirable that the Court would refrain from such determination in the summary proceeding initiated before it on the complaint of the receiver or D a party to the suit and the Court will direct the receiver to seek adjudication of the dispute before a competent court by bringing appropriate legal action. Save as aforesaid, it will not be correct to contend that in no case the Court exercising control and supervision of the property in suit by appointing a receiver will be incompetent even to pass direction against a third party for the purpose of preservation of the property, once such third E party pleads defence in justification of his action. The question of summary adjudication by the Court appointing the receiver or relegating the receiver to a regular suit for adjudication of the dispute concerning third party will depend on the nature of dispute and the defence claimed by the third party.

F In the facts of the case, however, it appears to us that the appellant tenant has come out with a specific case that the structures in question were there before his induction as a tenant. In support of such contention, a number of supporting affidavits have been filed. The appellant has also contended that the landlords and the receiver were fully aware of the existence of the structures long back, and according to the appellant, at G one point of time an agreement was reached between the landlords and the appellant for payment of a sum of Rs. 120 for such construction covering about 60 sq. ft. besides further amount on account of additional premium to be paid by the landlords and an Advocate's letter was sent to the receiver apprising the receiver of such understanding between the H parties.

The appellant has also claimed right to operate in a portion of the tenanted premises a permit room for serving liquor to the customers of the hotel after obtaining licence from the statutory authority on the footing that such right is incidental and ancillary to his right to operate an eating house or restaurant. Such contentions should not be decided in a summary proceeding to dispose of reports of the receiver or a complaint by a party to the suit about alleged illegal activities by a tenant in a property in suit. Any summary disposal of such dispute on the claim of some legal right by the tenant is likely to seriously affect the tenant, because once some constructions in the tenanted premises are removed on a finding that such constructions were made illegally and unauthorisedly by the tenant, the tenant not only suffers the said direction of removal at present but becomes liable to be evicted from the suit premises for such unauthorised construction by him. Similarly, the finding against the tenant on the question of running a permit room cannot but seriously affect the tenant's right to operate a permit room and is also likely to expose him to the risk of being evicted from the suit premises.

In the aforesaid facts, the impugned order cannot be held to be justified. We, therefore, allow the appeal and set aside the impugned order. It will be open to the receiver to bring appropriate legal action against the tenant appellant for removal of the alleged unauthorised structure and for preventing him from running a permit room in the tenanted premises, besides instituting a suit for eviction under the Rent Act. By way of abundant caution, we make it clear that we have not expressed any opinion on the respective rights of the parties.

K.K.T. Appeal allowed.